

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
vs.)	No. IP94-CR-008-01-B/E
)	1:06-cv-1489-SEB-VSS
BRADLEY HARDY, JR.,)	
)	
Defendant.)	

Entry Discussing Motion for Relief Pursuant to 28 U.S.C. § 2255

Defendant Hardy was convicted in this court of possessing an unregistered sawed-off shotgun and of possessing a firearm while a convicted felon. *United States v. Hardy*, 52 F.3d 147 (7th Cir.), *cert. denied*, 116 S. Ct. 207 (1995). He now seeks relief pursuant to 28 U.S.C. § 2255. The present action for that relief follows an earlier such action, docketed as No. IP 98-C-1195-B/F. The earlier § 2255 action was dismissed with prejudice on August 26, 1998. Both this court and the Court of Appeals declined to issue a certificate of appealability.

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Potts v. United States*, 210 F.3d 770, 770 (7th Cir. 2000). This statute, § 2244(b)(3), "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996); see *Benefiel v. Davis*, 403 F.3d 825, 827 (7th Cir. 2005); *United States v. Lloyd*, 398 F.3d 978 (7th Cir. 2005). Thus,

[a]nyone who files a "second or successive" application must start in the court of appeals, and any effort to begin in the district court must be dismissed for want of jurisdiction

Benton v. Washington, 106 F.3d 162, 165 (7th Cir. 1996). Section 2244 has been described as "self-executing." *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). This means that a district court lacks all jurisdiction over such a matter until permission to file is granted by the Court of Appeals. *Id.* No such permission has been granted to Hardy to authorize the present challenge, which must, accordingly, be dismissed for lack of jurisdiction.

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 01/11/2007



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana